

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

WEDNESDAY, THE 26TH SEPTEMBER 2007 / 4TH ASWINA 1929

WP(C).No. 31426 of 2006(N)

PETITIONER:

**BENNY,
S/O.CHIRAYATH ANTONY,
KIZHAKKUMMURI DESOM, PUTHENCHIRA VILLAGE,
MUKUNDAPURAM TALUK.**

BY ADV. SRI.V.BINOY RAM

RESPONDENTS:

**1. THE ADARSH KURIES & FINANCE (P) LTD.,
IRINJALAKUDA DESOM, MANAVALASSERY VILLAGE,
MUKUNDAPURAM TALUK, REP. BY ITS MANAGING
DIRECTOR.**

**2. ANTONY,
S/O.CHIRAYATH ITTOOP,
KIZHAKKUMMURI DESOM, PUTHENCHIRA VILLAGE,
MUKUNDAPURAM TALUK, THRISSUR DISTRICT.**

**3. PAULSON,
S/O.CHIRAYATH ANTONY,
KIZHAKKUMMURI DESOM, PUTHENCHIRA VILLAGE,
MUKUNDAPURAM TALUK, THRISSUR DISTRICT.**

**BY ADV. SRI.V.K.SREENATH
SRI.K.G.BALASUBRAMANIAN -- R2 AND R3**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 26/09/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

WP(C) NO: 31426/2006 N

APPENDIX

PETITIONER'S EXHIBITS.

EXT.P1. COPY OF THE ORDER IN EA NO. 18/2006 IN EP NO. 691/2002 IN OS NO. 375/00 OF THE MUNSIF COURT, KODUNGALLUR DT. 25/5/06.

EXT.P2. COPY OF THE AFFIDAVIT FILED BY ALPHONSA ANTONY, ADVOCATE IN E.P. NO. 375/00 IN OS NO. 375/00 OF THE MUNSIF COURT, KODUNGALLUR DT. 29/5/06.

EXT.P3. COPY OF THE PETITION IN EA NO. 288/06 IN EA NO. 18/96 IN EP NO. 691/02 IN OS NO. 375/00 OF THE MUNSIF COURT, KODUNGALLUR DT. 1/6/06.

EXT.P4. COPY OF THE ORDER IN EA NO. 288/06 IN OS NO. 375/00 OF THE MUNSIF COURT, KODUNGALLUR DT. 18/8/06.

RESPONDENT'S EXHIBITS

NIL.

True copy

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M.N.KRISHNAN, J

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W.P.(C) No.31426 OF 2006

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Dated this the 26th day of September 2007

JUDGMENT

This writ petition is filed challenging the order passed in E.A.No.288 of 2006 in E.A.No.18/2006 in E.P.No.691/2006 in O.S.No.375/2000. The petitioner herein preferred an application to set aside the sale under Order XXI Rule 90 C.P.C. It is admitted that the said application was posted for hearing under Order XXI Rule 105. For the default, the said petition was dismissed. Then the remedy provided is under Order XXI Rule 106. An application to restore a matter dismissed for default will squarely come within Order XXI Rule 106 and when an order is passed under Order XXI Rule 106, Order 43 Rule 1(ja) provides an appellate remedy. Therefore the writ petition as filed cannot be entertained and it is dismissed with liberty to the petitioner to move the appellate court, if the law so permits.

M.N.KRISHNAN, JUDGE

Cdp/-